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Paul Spitale

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GARDNER GROFF GREENWALD & VILLANUEVA, PC
2018 POWERS FERRY ROAD
SUITE 800
ATLANTA, GA 30339

EXAMINER

CHIN, RANDALL E

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/807,940	Applicant(s) SPITALE ET AL.	
	Examiner Randall Chin	Art Unit 3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,7-11 and 14-33 is/are pending in the application.
- 4a) Of the above claim(s) 18-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,7-11,14-17 and 29-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities:

On p. 3, line 16, "lines 7-7" of Fig. 3 appears incorrect (please see Replacement Sheet for Fig. 3). Compare also with p. 3, line 10, reciting "line 4-4" of Fig. 3.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, 7-11, 14-17 and 29-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snell 1,957,363 (hereinafter Snell).

As for claim 1, the patent to Snell teaches a hair brush (p. 1, lines 40-43) comprising a back or body 17 having a receiving portion at a first end, a sheet or cushion pad 11 (p. 1, lines 50-52) having an inner surface and an outer surface, wherein the cushion pad is received by the receiving portion (Fig. 2), a plurality of ferrules or bristle anchors 12 (Fig. 3) disposed in the cushion pad (p. 1, lines 57-59), the bristle anchors 12 having an aperture, and a plurality of bristles 10 tufted into each of the apertures (Figs. 2 and 3; p. 1, lines 56-60). It will be added that the bristle anchors

12 are made of a first material (celluloid as recited on p. 1, lines 1-3), the cushion pad 11 is made of second material (rubber as recited on p. 1, lines 51-52), and the first and second materials are different.

As for claim 1 now reciting that the bristle anchors and the cushion pad are “integrally molded together” and are “selected for producing a covalent bond between the bristle anchors and the cushion pad when integrally molded together”, such recitations are drawn towards method steps and not germane to patentability in apparatus claims. It is patentably irrelevant as to the actual manufacturing or method step utilized in forming/making the hair brush of apparatus claim 1. What is critical here in apparatus claim 1 is simply the final product. Here, in Snell, both the bristle anchors and cushion pad are made of different materials, as stated, just as in Applicant’s invention. In apparatus claim 1, it is patentably irrelevant as to whether the manufacturing step(s) utilize injection molding or snap or pressed-fit steps, for example, to arrive at the final product. In any case, it would have been obvious to one of ordinary skill in the art to have used heat or injection molding process techniques, for example, in Snell (although of no patentable moment here in apparatus claim 1 as already stated) to form a covalent bond between the bristle anchors and cushion pad to more securely fasten or connect the bristle anchors to the cushion pad, if so desired.

As for claim 2, the bristle anchors include a first portion 14 that extends from the outer surface of the cushion pad and a second portion 15 that extends from the inner surface of the cushion pad (Figs. 2 and 3).

As for claim 3, the first and second portions of the bristle anchors extend outwardly from the corresponding outer and inner surfaces of the cushion pad (Fig. 2).

As for claims 7 and 14 reciting that the first material that the bristle anchors are constructed from a propylene material, such material is well known and it is well within the level of ordinary skill to select propylene for its stable properties and the use of such material would have yielded predictable results to one of ordinary skill. Note Snell already teaches the anchors 12 being made from celluloid or other suitable moulded material (p. 1, lines 1-3). Thus, one of ordinary skill could have also used the well known material propylene for stability purposes and the results would have been predictable.

As for claim 8, the second material that the cushion pad 11 is constructed from rubber (p. 1, lines 50-52), which is deemed a thermoplastic elastomeric material.

As for claim 9, the plurality of bristles 10 are tufted in the bristle anchor apertures with adhesive (p. 1, lines 58-60).

As for claim 10, at least to an extent, the plurality of bristles is tufted by a force-fit in the bristle anchor apertures.

As for claim 11, and as stated previously, the patent to Snell teaches a hair brush comprising a body 17 having a receiving portion at a first end, a cushion pad 11 having an inner surface, an outer surface, wherein the cushion pad is received by the receiving portion (Fig. 2), a plurality of bristle anchors 12 (Fig. 3) disposed in the cushion pad (Fig. 2), the plurality of bristle anchors 12 each having a bore, a first end, a second end, and a waist or groove 16 (Fig. 3), wherein the groove is disposed between the first end and the second end and is adapted to engage with the apertures in the cushion pad (p.

1, lines 60-71), and the bore is oriented generally perpendicular to the groove (Fig. 3), and a plurality of bristles 10 tufted into each of the bores.

As for claim 11 now reciting that the bristle anchors and the cushion pad are “integrally molded together” and are “selected for producing a covalent bond between the bristle anchors and the cushion pad when integrally molded together”, such recitations are drawn towards method steps and not germane to patentability in apparatus claims. It is patentably irrelevant as to the actual manufacturing or method step utilized in forming/making the hair brush of apparatus claim 1. What is critical here in apparatus claim 11 is simply the final product. Here, in Snell, both the bristle anchors and cushion pad are made of different materials, as stated, just as in Applicant’s invention. In apparatus claim 11, it is patentably irrelevant as to whether the manufacturing step(s) utilize injection molding or snap or pressed-fit steps, for example, to arrive at the final product. In any case, it would have been obvious to one of ordinary skill in the art to have used heat or injection molding process techniques, for example, in Snell (although of no patentable moment here in apparatus claim 11 as already stated) to form a covalent bond between the bristle anchors and cushion pad to more securely fasten or connect the bristle anchors to the cushion pad, if so desired.

As for claim 12, a second end of the body includes a handle (Figs. 1 and 2).

As for claim 13 reciting that the bristle anchors and the cushion pad are “connected by a covalent bond”, such recitation is deemed drawn towards a method step and methods of forming are not germane to patentability in apparatus claims. In

any case, in Snell, there is deemed a covalent bond” between the bristle anchors and cushion pad.

As for claim 15, the second material that the cushion pad 11 is constructed from is rubber (p. 1, lines 50-52), which is deemed a thermoplastic elastomeric material.

As for claim 16, the plurality of bristles 10 are tufted in the bores with adhesive (p. 1, lines 58-60).

As for claim 17, at least to an extent, the plurality of bristles is tufted by force-fit in the bores.

As for claim 29 reciting that the bristle anchors are pre-formed and the cushion pad is molded around the pre-formed bristle anchors so that the bristle anchors are embedded securely in the cushion pad, as already stated, it would have been obvious to one of ordinary skill in the art to have molded the cushion pad around Snell’s pre-formed bristle anchors (although of no patentable moment here in apparatus claim 11 as already stated) to form a stronger bond or connection between the bristle anchors and cushion pad to more securely fasten or connect the bristle anchors to the cushion pad, if so desired.

As for claim 30, in Fig. 2, the receiving portion defines a rear cavity, the cushion pad 11 is disposed in the cavity, the bristles 10 extend through apertures (i.e., apertures in cushion pad 11) in “a front face” (not positively recited) of the brush, the front face apertures are aligned with the bristle anchor apertures, and the bristles extend from the bristle anchors through the front face apertures and beyond.

As for claim 31, in Fig. 2, the receiving portion defines a front recess and the cushion pad 11 is disposed in the recess and exposed through the recess (broadly, since "a front recess" has not been more specifically defined).

As for claim 32, as stated above, the receiving portion defines a rear cavity, the cushion pad 11 is disposed in the cavity, and the bristles extend through apertures in "a front face" (not positively recited) of the brush.

As for claim 33, as stated above, the front face apertures (i.e., apertures in cushion pad 11) are aligned with the bristle anchor apertures and the bristles extend from the bristle anchors and through the front face apertures and beyond

Conclusion

4. Applicant's arguments with respect to claims 1-3, 7-11, 14-17 and 29-33 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments pertaining to Snell are deemed adequately addressed by the above rejection. Specifically, Applicant's argument directed to there being a covalent bond formed between the bristle anchors and cushion pad has been addressed in the above art rejection to Snell. New claims 29-33 have also been addressed above and are not deemed allowable for the above reasons.

.Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Chin whose telephone number is (571) 272-1270. The examiner can normally be reached on Monday through Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on (571) 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Randall Chin/
Primary Examiner, Art Unit 3723